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10/826,014	04/16/2004	Yasuhito Miyata	79874	9236

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EXAMINER

CULBRETH, ERIC D

ART UNIT	PAPER NUMBER
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3616

DATE MAILED: 09/11/2006

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary	Application No. 10/826,014	Applicant(s) MIYATA, YASUHIITO	
	Examiner Eric Culbreth	Art Unit 3616	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 12 July 2006.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 2-5 and 7-20 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 2-5 and 7-20 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☒ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 12 July 2006 is/are: a) ☐ accepted or b) ☒ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. _____.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- * See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|--|---|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | 5) <input type="checkbox"/> Notice of Informal Patent Application |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08)
Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____ |

DETAILED ACTION

Drawings

1. New corrected drawings in compliance with 37 CFR 1.121(d) are required in this application because replacement sheets of pages 2 and 7 of the drawing sheets were not supplied with the response of 7/12/06 (the only drawings in the electronic file filed with the response are marked up copies; note the requirements for corrected drawings in the following paragraph, especially that the corrected drawing sheets have to be labeled "Replacement Sheet" in the top margin. Applicant is advised to employ the services of a competent patent draftsman outside the Office, as the U.S. Patent and Trademark Office no longer prepares new drawings. The corrected drawings are required in reply to the Office action to avoid abandonment of the application. The requirement for corrected drawings will not be held in abeyance.

2. The drawings were received on 7/12/06. These drawings are not approved for the reasons above (markings on the drawings, not labeled "Replacement Sheet").

3. The drawings are objected to because of the following informalities. Corrected drawing sheets in compliance with 37 CFR 1.121(d) are required in reply to the Office action to avoid abandonment of the application. Any amended replacement drawing sheet should include all of the figures appearing on the immediate prior version of the sheet, even if only one figure is being amended. The figure or figure number of an amended drawing should not be labeled as "amended." If a drawing figure is to be

canceled, the appropriate figure must be removed from the replacement sheet, and where necessary, the remaining figures must be renumbered and appropriate changes made to the brief description of the several views of the drawings for consistency. Additional replacement sheets may be necessary to show the renumbering of the remaining figures. Each drawing sheet submitted after the filing date of an application must be labeled in the top margin as either "Replacement Sheet" or "New Sheet" pursuant to 37 CFR 1.121(d). If the changes are not accepted by the examiner, the applicant will be notified and informed of any required corrective action in the next Office action. The objection to the drawings will not be held in abeyance.

a. In Figure 3 and paragraphs [0018] and [0027], "A-A" should be "4-4", as a section line should be named for the figure it represents.

b. In Figure 11 and in paragraphs [0026], "B-B" should be "12-12".

Because the drawings filed 7/12/06 were not approved, the objections to the drawings remain. Note also that paragraphs [0018] and [0026] were not amended.

4. The drawings are objected to under 37 CFR 1.83(a). The drawings must show every feature of the invention specified in the claims. Therefore, the linear and dotted configuration (claim 20) must be shown or the feature(s) canceled from the claim(s). No new matter should be entered.

Corrected drawing sheets in compliance with 37 CFR 1.121(d) are required in reply to the Office action to avoid abandonment of the application. Any amended replacement drawing sheet should include all of the figures appearing on the immediate

prior version of the sheet, even if only one figure is being amended. The figure or figure number of an amended drawing should not be labeled as "amended." If a drawing figure is to be canceled, the appropriate figure must be removed from the replacement sheet, and where necessary, the remaining figures must be renumbered and appropriate changes made to the brief description of the several views of the drawings for consistency. Additional replacement sheets may be necessary to show the renumbering of the remaining figures. Each drawing sheet submitted after the filing date of an application must be labeled in the top margin as either "Replacement Sheet" or "New Sheet" pursuant to 37 CFR 1.121(d). If the changes are not accepted by the examiner, the applicant will be notified and informed of any required corrective action in the next Office action. The objection to the drawings will not be held in abeyance.

Because the drawing corrections filed 7/12/06 were not approved, the objection to the drawings remains.

Specification

5. The disclosure is objected to because of the following informalities: In paragraph [0039], lines 7-9 as amended 7/12/06, there is an incomplete sentence (in the 7/12/06, the applicant amended the sentence after the incomplete sentence).

Appropriate correction is required.

Double Patenting

6. The nonstatutory double patenting rejection is based on a judicially created doctrine grounded in public policy (a policy reflected in the statute) so as to prevent the

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unjustified or improper timewise extension of the "right to exclude" granted by a patent and to prevent possible harassment by multiple assignees. A nonstatutory obviousness-type double patenting rejection is appropriate where the conflicting claims are not identical, but at least one examined application claim is not patentably distinct from the reference claim(s) because the examined application claim is either anticipated by, or would have been obvious over, the reference claim(s). See, e.g., *In re Berg*, 140 F.3d 1428, 46 USPQ2d 1226 (Fed. Cir. 1998); *In re Goodman*, 11 F.3d 1046, 29 USPQ2d 2010 (Fed. Cir. 1993); *In re Longi*, 759 F.2d 887, 225 USPQ 645 (Fed. Cir. 1985); *In re Van Ornum*, 686 F.2d 937, 214 USPQ 761 (CCPA 1982); *In re Vogel*, 422 F.2d 438, 164 USPQ 619 (CCPA 1970); and *In re Thorington*, 418 F.2d 528, 163 USPQ 644 (CCPA 1969).

A timely filed terminal disclaimer in compliance with 37 CFR 1.321(c) or 1.321(d) may be used to overcome an actual or provisional rejection based on a nonstatutory double patenting ground provided the conflicting application or patent either is shown to be commonly owned with this application, or claims an invention made as a result of activities undertaken within the scope of a joint research agreement.

Effective January 1, 1994, a registered attorney or agent of record may sign a terminal disclaimer. A terminal disclaimer signed by the assignee must fully comply with 37 CFR 3.73(b).

7. Claims 2-5 and 7-20 as best understood are provisionally rejected on the ground of nonstatutory obviousness-type double patenting as being unpatentable over claims 1-17 of copending Application No. 10/826,084. Although the conflicting claims are not identical, they are not patentably distinct from each other because both applications ultimately claim an airbag apparatus with a portion of the airbag mounted on the handlebars.

This is a provisional obviousness-type double patenting rejection because the conflicting claims have not in fact been patented.

8. Claims 2-5 and 7-20 as best understood are provisionally rejected on the ground of nonstatutory obviousness-type double patenting as being unpatentable over claims 1-22 of copending Application No. 10/813,523. Although the conflicting claims are not

identical, they are not patentably distinct from each other because both applications ultimately claim an airbag apparatus with a portion of the airbag mounted on the handlebars.

This is a provisional obviousness-type double patenting rejection because the conflicting claims have not in fact been patented.

9. Claims 2-5 and 7-20 as best understood are provisionally rejected on the ground of nonstatutory obviousness-type double patenting as being unpatentable over claims 1-20 of copending Application No. 10/800,263. Although the conflicting claims are not identical, they are not patentably distinct from each other because both applications ultimately claim an airbag apparatus with a portion of the airbag mounted on the handlebars.

This is a provisional obviousness-type double patenting rejection because the conflicting claims have not in fact been patented.

Terminal Disclaimer

It fails to disclaim the terminal portion of any patent granted on the subject application.

Specifically, in line 9 of page 1 of each of the three terminal disclaimers filed 7/12/06, after the word "to" (second occurrence) should be inserted "any patent granted on" (i.e., the text should read "legal title to any patent granted on U.S. Patent application Serial Number...").

Claim Rejections - 35 USC § 112

10. Claims 2-5 and 8-10 and 20 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

- a. In claim 5, line 6, “us” should apparently be “is”.
- b. In claim 9, line 2, there is no antecedent basis for “the frangible portion”.
- c. Claim 9 should end with a period.
- d. Claim 5, from which claim 9 depends, recited the invention as an airbag apparatus for a motorcycle. However, claim 9 recites the airbag’s relationship to the handlebar of the motorcycle. Hence, it is not clear if the invention of claim 9 is only the airbag apparatus or if it is the apparatus in combination with the motorcycle.
- e. In claim 20, lines 1-2 there is no antecedent basis for “the frangible portion”.
- f. When claim 4 recites strip portions extending along the handlebar, it is not clear if the invention is just the airbag apparatus or if it includes the motorcycle handlebar.

Claim Rejections - 35 USC § 102

11. The text of those sections of Title 35, U.S. Code not included in this action can be found in a prior Office action.

12. Claims 2, 5 and 7-10 as best understood are rejected under 35 U.S.C. 102(e) as being anticipated by Kuroe et al US006846009B2 (of record).

Kuroe et al discloses (Figure 7) and airbag apparatus for a motorcycle as functionally recited comprising an airbag 122. As the preamble recites the airbag apparatus as being “for a motorcycle”, the recitations of a portion of the airbag adapted and configured for being mounted to the handlebar, the cover adapted and configured to extend over the handlebar, etc. are functional statements of intended use, failing to patentably define distinguishing structural characteristics. Kuroe et al discloses a housing 121 with a cover extending over the airbag including any portion of the airbag that, as functionally recited, is adapted and configured to be (i.e., capable of being) attached to a handlebar and a separable portion 121d at which the cover opens to deploy the bag. Again, as functionally recited in claim 5, the recitation of another portion of the airbag being adapted and configured for being mounted to a location of the motorcycle other than the handlebar is a functional statement of intended use met by the bottom portion of the airbag 122, which at any rate is mounted to the steering post. Regarding claims 2 and 7 separable portion 121d is a thinned portion of the cover body that is torn open during airbag deployment, and airbag 122 in Figure 7 includes a retainer 124, 125 with another portion of the airbag mounted in the retainer at 122a and a portion of the airbag (the portion above housing 124) external of the retainer 124, 125 prior to airbag deployment. Again, as with claim 5, above, the recitations in claim 7 involving how the airbag and cover are adapted and configured to interact with the motorcycle handlebars are functional statements of intended use. Regarding claims 8-

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10, the airbag 122 is accordion folded prior to deployment. The other recitations in claims 8-10 regarding the relationship of the airbag apparatus to the motorcycle/handlebar are functional statements of intended use.

Claim Rejections - 35 USC § 103

13. The text of those sections of Title 35, U.S. Code not included in this action can be found in a prior Office action.

14. Claims 3-4 as best understood are rejected under 35 U.S.C. 103(a) as being unpatentable over Kuroe et al in view of Seifert US006099028A, of record.

It would have been obvious to one of ordinary skill in the art at the time the invention was made to modify Kuroe et al to include overlapping ends of material on the handlebar cover as taught by Seifert in Figure 3 in order to use an alternative door opening that is conventional and interchangeable in airbag technology (i.e., doors with overlapping edges that slide free are just as common in airbag art as tear seams). As broadly recited in claim 4, in the combination Seifert's cover would include a plurality of strip portions (the left, right, and center portions of the cover as broadly recited) so that there are a plurality of end portions of cover material. The recitation in claim 4 that the portions extend along the handlebar are a functional statement of intended use.

Conclusion

15. Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire **THREE MONTHS** from the mailing date of this action. In the event a first reply is filed within **TWO MONTHS** of the mailing date of this final action and the advisory action is not mailed until after the end of the **THREE-MONTH** shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than **SIX MONTHS** from the date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Eric Culbreth whose telephone number is 571/272-6668. The examiner can normally be reached on Monday-Thursday, 9:00-6:30.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Paul Dickson can be reached on 571/272-6669. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

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Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.



Eric Culbreth
Primary Examiner
Art Unit 3616

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Not Approved
EC
9/7/04

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FIG. 2

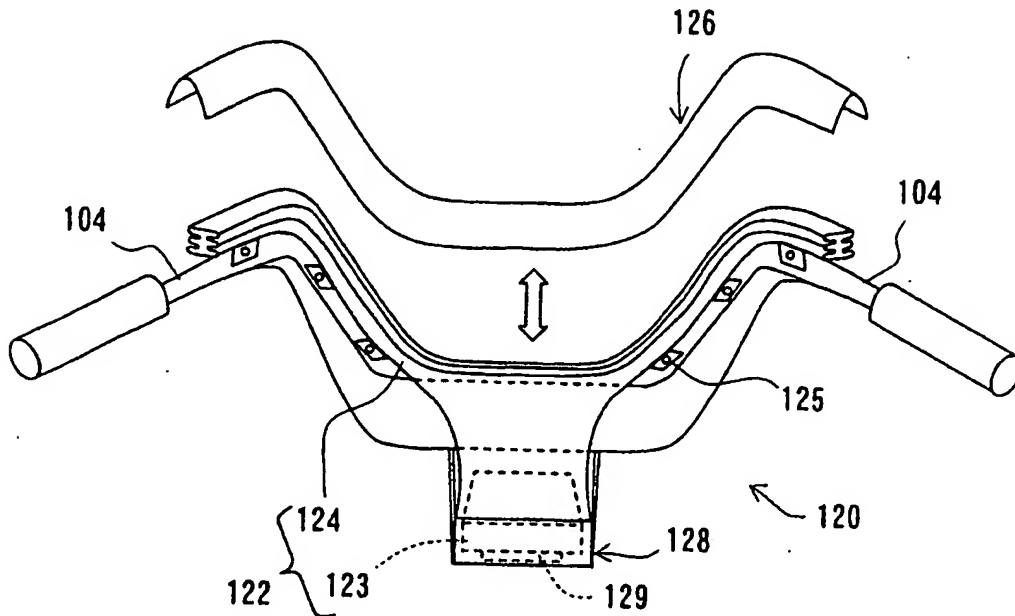


FIG. 3

